THIVYA NAIR CHANDRAN & ANOR v. PUSPHALATHA SURANDRAN & ANOR

HIGH COURT MALAYA, IPOH
LEE SWEE SENG J
[ORIGINATING SUMMONS NO: 24NCVC-248-05-2014]
15 OCTOBER 2014

FAMILY LAW: *Children – Adoption – Consent for adoption withdrawn – Application for child to be returned to the natural parents – Whether natural parents had good reasons to withdraw consent – Whether natural parents could be denied the right to raise child – Whether consent of natural parents had been unreasonably withheld – Welfare of the child – Whether served if order is made to return child to natural parents – Adoption Act 1952, ss. 5(1), (1)(c), 6 – Guardianship of Infants Act 1961, s. 12*

The first and second plaintiffs were the natural mother and father of a child born out of wedlock. As they were not married to each other and were relatively young, the plaintiffs gave the child up for adoption to the defendants as the adoptive parents. However, a few days after the child's birth, the first plaintiff changed her mind and quickly tried to contact the defendants to inform them. The defendants, upon knowing her change of mind, avoided her calls. Hence, the plaintiffs filed the instant application for the child to be returned to them under s. 12 of the Guardianship of Infants Act 1961 which empowers the court to make an order than an infant child in the custody of any person be produced in court and be returned to the child's natural parents. The issues that arose were (i) whether the consent of the natural parents has been unreasonably withheld in the overall circumstances of the case; (ii) whether it was for the welfare of the child that the child be returned to his natural parents.

Held (allowing application):

(1) The consent of both the parents to the child must be obtained for the adoption of the child by the intended adoptive parents (s. 5(1) of the Adoption Act 1952). The consent may be dispensed with by the court if under s. 5(1)(c) of the Act the consent of the parents is unreasonably withheld. The court in an adoption proceeding must be satisfied that the natural parents have consented to and understand the nature and effect of the adoption order to be made and that the parents understood that the adoption order when made would permanently deprive them of their parental rights to the child. In the circumstances herein, the natural parents were labouring under the misconception that the Welfare Department would take the child away from them for adoption as they were not married to each other. Further, the consent was procured from the plaintiffs hardly seven days after delivery of the child. Thus, it could

not be said that the plaintiffs had understood the nature and effect of the adoption order and the effect it would have of permanently depriving them of their parental rights over the child forever. (paras 25-31)

(2) While no child should suffer because the natural parents are psychologically not prepared to be parents to the child to nurture him, equally no intended adoptive parents should be allowed to permanently deprive the natural parents of their parental rights to the child by adopting the child when the natural parents have revoked their consent earlier given which consent had been given without being fully conscious of the nature and effect of the adoption order, and where the consent had been procured hurriedly and given hastily. Herein, there should be no good reason to deny the natural parents of the child from wanting to raise the child themselves no matter how challenging their circumstances in life may be. The plaintiffs had good reasons to withdraw their consent given under a mistaken notion of fact that their baby would be forcibly taken away from them. There was no obstacle in their path to be married to each other since the second plaintiffs' parents have consented to it and indeed they have made up their mind to want to raise their child on their own, and to provide a stable family for the child. Thus, this court could not say that their consent to the adoption had been unreasonably withheld. (paras 34, 36, 39 & 41)

(3) Section 6(b) of the Adoption Act 1952 provides that before making an adoption order, besides ascertaining that the natural parents have consented to the adoption within the meaning of s. 6(a), the court must further be satisfied that the order, if made, will be for the welfare of the child. In this case, both the natural parents would be getting married to each other; the second plaintiff having obtained his parents' consent and blessing and the first plaintiff having obtained an order for this court consenting to her marrying the father of her child (*Kanalingam v. Kanalimgam*.) They are both gainfully employed and the fact that they are young and inexperienced should not be a factor taken against them. (paras 42, 43 & 45)

(4) This court could not say that the welfare of the child would not be served if an order is made for the child to be returned to his natural parents and for them to raise him. It is the plaintiffs' child and they should not be denied the opportunity to bring the child up the best they can. Even if their resources to provide for the child be less than that of the defendants, that would not operate in any way to deprive them of their natural right to raise their own. Relative poverty of the natural parents should not be a point to be pitted against them. (para 48)

(5) Where both nature and nurture would contend as it were for the love of a child, this court would lean in favour of nature. The order for the return of the child to the natural parents could not be said to be not in

the welfare of the child. A child should be left to the natural parents to nurture and only if the free consent of the natural parents in giving the child for adoption is not in dispute and that the consent is unreasonably withheld, would the child then be left with the adoptive parents for them to raise the child as their very own to the permanent exclusion of the parental rights of the natural parents. Thus, this court made an order for the child to be removed from the defendants and be returned to the plaintiffs. (paras 52)

Case(s) referred to:
Kanagalingam v. Kanagarajah [1982] CLJ 150; [1982] CLJ (Rep) 143 FC ***(refd)***
Re Baby M (an infant) (adoption: consent) [1994] 3 CLJ 98 HC ***(dist)***
Re Thow Seng Yeap; Thow Chow Goon & Anor v. Khor Kar Chooi & Anor [1989] 1 LNS 6 SC ***(refd)***

Legislation referred to:
Adoption Act 1952, ss. 5(1)(c), 6(a), (b), (c)
Guardianship of Infants Act 1961, s. 12
Law Reform (Marriage and Divorce) Act 1976, s. 12(2)

Adoption Act 1958 [UK], s. 5(1)(b)
Adoption and Children Act 2002 [UK], ss. 47, 52(3)

For the plaintiffs - Dalgit Singh; M/s Gurdev, Dalgit, Su & Co
For the defendants - Leonard Anselm Gomes (Cheryl Anne Gomes with him); M/s LA Gomes, Meor Shaazizi & Assocs

Reported by Suhainah Wahiduddin

JUDGMENT

Lee Swee Seng J:

[1] In any dispute involving a child, the law leans to protect the child and the overriding consideration is always what would be in the best interest of the child. No one would doubt the wisdom of such a universal principle of law. However when applying that to the facts of this case, the court had agonised with the parties on where the scale of justice should tip and whether the baby boy given up for adoption soon after birth to the plaintiffs, who were yet unmarried then, should be returned to them as the natural parents of the baby. The intended adoptive parents had meanwhile nurtured the baby for close to a month. The natural mother of the child had communicated her change of intention to the intended adoptive mother nine days after handing over the baby to her.

[2] She tried with her fiancé to have access to the baby but was prevented from doing so by the defendants. Both sides had lodged their respective police reports. The natural parents filed this application on 26 May 2014 for the return of the baby to them. The natural mother and father are both the

first and second plaintiffs respectively. The first and second defendants are the intended adoptive mother and father respectively. No adoption application has been filed yet both before the filing of this application or for that matter when the application was heard.

Problem

[3] The natural mother was a mere 18 years old and the father just 19 when the child was born. As they were not married to each other, it was told to them that their baby would be taken away from them by the Welfare Department for adoption and that they would not see the baby again. They were anxious as to what they should do. A suggestion came from a friend that his cousin and her husband in the defendants were childless and that they were keen to adopt the baby. Arrangements were made for the baby to be given up for adoption immediately after birth. The childless couple was overjoyed. The plaintiffs meanwhile were relieved that the baby would be in good hands and that the Welfare Department would not take the baby away from them. Both of the plaintiffs signed the relevant consent on 10 May 2014, soon after the mother had given birth on 3 May 2014, to give the baby up for adoption.

[4] However she had time after that to reflect on the implications of her action. She learned that she could actually bring up her child with the natural father of the child and that the Welfare Department would not be able to forcibly take the baby away from her. She also learned that even though her mother would not consent to her marrying her fiancé yet she could still apply for her mother's consent to be dispensed with. Her mother had wanted her to marry a man of her choice whereas she had wanted to marry the one she loves, the second plaintiff.

[5] In the meanwhile her fiancé parents had consented to him marrying her and to help raise the child. Realising that she had made a rash decision with severe ramifications, she quickly tried to contact the defendants on 12 May 2014 to inform them of her change of mind. She quickly tried to establish contact with the defendants but upon knowing her change of mind, they had tried to avoid her calls.

[6] Fearing that she might never be able to see the baby forever, she filed this originating summons on 26 May 2014 and applied with her fiancé to have interim access to the baby pending the urgent hearing of their application. The court had granted an interim access on weekends for the plaintiffs to see their baby at the home of the defendants in Ipoh. They would of course have to travel from Johor Bahru where they are working to Ipoh to be able to see the child.

[7] This application by the plaintiffs as the natural mother and father of the child is basically for the child to be returned to them under s. 12 of the Guardianship of Infants Act 1961 which empowers the court to make an

order that an infant child in the custody of any person be produced in court and be returned to the child's natural parents.

Principles

[8] It is most unfortunate that events have happened the way it did. The court has to deal with strong human emotions from both the parties in this proceedings; one from the natural parents and another from the intended adoptive parents. Like all disputes the court looks to the law for guidance knowing that whichever decision it makes, one party would be relieved and the other grieved. How true it is that joy can so easily turn into grief. Indeed joy and sorrow are interwoven fine into the fabric of life. It is said that there is no life into which some rain has not fallen and with much love there comes much pain. One cannot imagine the anguish and agony that both sides have to endure especially the two women, as they await the outcome of the case.

The Circumstances Under Which The Consent To The Adoption Was Given By The Plaintiffs As The Natural Mother And Father Of The Child

[9] It is true that both the plaintiffs as the natural parents had signed a "Letter of Consent to Adoption" or a "Surat Keizinan Pengangkatan" which was in the form of a statutory declaration with the crest of the Government on top and below that the words "Jabatan Pendaftaran Negara" ('JPN') or in English the "National Registration Department". The said statutory declaration bore the words "JPN AA07" on its top right hand, signifying that it is perhaps a prescribed form of the JPN.

[10] The circumstances and the context in which the letter of consent was signed by the plaintiffs cannot be ignored. The first plaintiff narrated in her affidavit in support of her application that her baby was born on 3 May 2014 at 7.06am in the Hospital Aminah Johor Bahru and that the second defendant is the father of the child. She stated that both of them were not married and she was 18 years old and he, 19. At that time the second plaintiff had not obtained the blessings of his parents for them to be married to each other even though she was already pregnant. They were both worried and fearful in facing the reality of the situation. She said she was ashamed for having become pregnant with child even before marriage. She felt lost and did not know what to do with the child to be born.

[11] Towards the late stage of her pregnancy, the second plaintiff had told his friend one Mr Kartik and he informed them of his cousin the first defendant in Ipoh who was childless and who was looking for a child to adopt. As she was confused and in a state of panic, they both agreed to hand over the baby that will be born to the first defendant. She said that before she gave birth the first defendant did tell her by phone that she would be allowed to be with the baby at least a week after delivery.

[12] On 4 May 2014, a day after her delivery, both the defendants who had been introduced to her, came to the said Hospital to discharge her and the baby. The intended adoptive mother informed the counsellor matron that because the mother who had just given birth was not married and that she was a relative, she had helped in the discharge and further to take care of both the mother and the baby. She further averred that the matron had told her that since the baby and her would be taken to Ipoh, she would have to register with the Welfare Officer in Ipoh as she had not married and the child had to be supervised by the Welfare Officer for a few months to see how she would take care of the child. Later the defendants took the child and left her in Mr Kartik's home.

[13] On 10 May 2014, the defendants came to Mr Kartik's home and called both the plaintiffs to go to the JPN in Johor Bahru to change the names of the mother and father of the child in the birth certificate to that of the first and second defendants respectively. The officer at the JPN informed them that the relevant application had to be made to court for an adoption order and thereafter the names of the adoptive parents may be inserted into the birth certificate of the child in place of the natural parents.

[14] If the above is true, it goes to show the extent to which childless couples would go to ensure that they get a child that they may call their own even if it be the falsification of birth records. There are of course many honourable and honest government servants who discharge their duties according to the highest standards of the law and who would not be led astray even if the intents of the intended adoptive parents are noble.

[15] On the same day itself she was taken by the defendants to a Commissioner for Oaths in Johor Bahru to sign a letter of declaration to relinquish her right to the child. She said she had asked for a copy of the letter of declaration after she had signed but the defendants refused to give it to her. From the letter of consent exhibited it appears that the second plaintiff had signed the said letter of declaration as well.

[16] On 12 May 2014 the first defendant had instructed the plaintiffs to come to Ipoh to sign the adoption papers and also for them to give their bank account number for the transport expenses to be banked into their account for the travel to Ipoh.

[17] According to the first plaintiff, that evening of 12 May 2014 itself, she had a full and frank discussion with her fiancé the second plaintiff and they had made the decision to care for and raise the child. The second plaintiff had also informed his parents and they could accept the situation and they gave their blessings for her to be married to him and they had begun to make preparation for their wedding.

[18] On 13 May 2014 the second plaintiff had contacted the first defendant and told her that both the plaintiffs want to take back the child as natural parents of the child. The first defendant said told them that she would not

hand over the child to them and that they would need to get a court order if they want back the child. Thereafter the plaintiffs phone calls to the defendants went unanswered. The plaintiffs tried to get their friend Mr Kartik to help but he told them that his cousin would not hand over the child back to them and that the defendants want to raise the child as their own and that the child had now belonged to them.

[19] On 17 May 2014 the second plaintiff's parents together with the first plaintiff came to Ipoh and tried to contact the first defendant on her handphone but upon realising it was the plaintiffs who were trying to contact her, the calls were disconnected or unanswered. On 18 May 2014, the first plaintiff through a relation managed to trace and track down the house of the first defendant and so they did go to the house in Pesiaran Sg Pari, Ipoh but the second defendant who was in the house refused to talk to them and went back inside the house. They were told by the defendants' relations who were at the house that if the plaintiffs want to get back the child they must get a court order to that effect. She then lodged a police report and the police said they could not do anything as it was a civil case.

[20] She was fearful that the defendants might commence an adoption proceeding for the child and not serve the relevant papers on her but based merely on the letter of consent sent by her and her fiancé. She said she had signed the said a letter of consent on 10 May 2014 soon after she delivered on 3 May 2014 and at that stage she was still confused and depressed and not having fully recovered from what is commonly documented as post-natal blues.

[21] The plaintiffs believed the defendants have no right to keep the child away from them and to refuse to return the child to them as there is as yet no adoption proceedings afoot and no interim custody order made in the defendants' favour. They both in their affidavits said that they were stressed, confused and lost when they signed the letter of consent and not fully appreciating and understanding the implications and the repercussions of their signing the said letter of consent. They had also tried to communicate their change of intent as soon as they had become aware of the mistake and foolishness in their decision made and had tried every means to get the child back but to no avail and hence this application filed and heard on an urgent basis.

[22] While there are some disputes on the facts as can be seen in the affidavits filed by the first defendant and Mr Kartigesan (referred to as Mr Kartik by the first plaintiff), the material facts are not in serious dispute. At the core of the case is the fact that the plaintiffs had initially given up their child for adoption by the defendants soon after the delivery of the child in the said hospital. They were both young and unmarried. One can appreciate the torment and trauma in the Hindu tradition of Indians where there is both the stigma of unmarried mother and the scorn and contempt poured on those

who have a baby out of wedlock. As can be discerned, the whole exercise was accelerated by the defendants who were keen to adopt a baby and who were concerned that the natural parents might change their mind. One can sympathise with the defendants for as was the inconsolable cry of a childless mother long ago, "Give me children, or I shall die!"

[23] Likewise one can appreciate how faced with the prospect and challenge of bringing up a child when as yet the natural parents are young and as yet unmarried, can be daunting and even depressing for them. Must they be resigned to the consequences of their hasty decision and live with the harsh reality of having lost their child forever and having permanently forfeited all their right to the child forever?

[24] Must the intended adoptive parents' joy be so short-lived such that what was a moment ago, the excitement and exhilaration of bringing up a child as one's very own may now be replaced with the emptiness of being childless again when they are just beginning to find meaning for their lives and love for the child with whom they are beginning to bond? The law can only take us so far and one of the couples would have at the end of this decision, to live with the tragic loss of their hopes and dreams.

Whether The Consent Of The Natural Parents Has Been Unreasonably Withheld In The Overall Circumstances Of The Case

[25] It is a condition under s. 5(1) of the Adoption Act 1952 that the consent of both the parents to the child must be obtained for the adoption of the child by the intended adoptive parents. The consent may be dispensed with by the court if under s. 5(1)(c) of the Act the consent of the parents is unreasonably withheld. Section 5 of the Adoption Act 1952 is reproduced below:

> 5. Consents to adoptions
>
> (1) Except as provided in this section, **an adoption order shall not be made except with the consent of every person** or body of persons **who is a parent** or guardian **of the child** in respect of whom the application is made or who is liable to contribute to the support of the child and an adoption order shall not be made upon the application of one of two spouses without the consent of the other of them:
>
> Provided that **the Court may dispense with any consent required by this section if satisfied**:
>
> (a) in the case of a parent or guardian of the child, that he has abandoned, neglected or persistently ill-treated the child;
>
> (b) in the case of a person liable to contribute to the support of the child, that he has persistently neglected or refused so to contribute;
>
> (c) in any case, that the person whose consent is required cannot be found or is incapable of giving his consent or **that his consent is unreasonably withheld**; or

(d) in any case, that in accordance with any written law relating to the adoption of children for the time being in force in any country any competent authority has given permission or granted a licence authorizing the care and possession of the child to be transferred to the applicant.

(2) The Court may dispense with the consent of the spouse of an applicant for an adoption order if satisfied that the person whose 10 consent is to be dispensed with cannot be found or is incapable of giving such consent or that the spouses have separated and are living apart and that the separation is likely to be permanent.

(3) The consent of any person to the making of an adoption order in pursuance of an application (not being the consent of the child) may be given (either unconditionally or subject to conditions with respect to the religion in which the child is to be brought up) without knowing the identity of the applicant for the order; and where consent so given by any person is subsequently withdrawn on the ground only that the identity of the applicant is unknown that consent shall be deemed for the purposes of this section to be unnecessarily withheld.

(4) While an application for an adoption is pending in any Court, any parent or guardian of the child who has signified his consent to the making of an adoption order in pursuance of the application shall not except with the leave of the Court remove the child from the care and possession of the applicant; and in considering whether to grant or to refuse such leave the Court shall have regard to the welfare of the child. (emphasis added)

[26] With respect to the consent of the natural parents, the court in an adoption proceeding must be satisfied that the natural parents have consented to and understand the nature and effect of the adoption order to be made and that the parents understood that the adoption order when made would permanently deprive them of their parental rights to the child. This is provided for in s. 6 of the Adoption Act which reads:

6. Matters with respect to which Court to be satisfied

The Court before making an adoption order shall be satisfied:

(a) that every person whose consent is necessary under this Act, and whose consent is not dispensed with, *has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights*;

(b) that the order if made will be **for the welfare of the child**, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child;

(c) that neither the applicant nor the parent or guardian has received 10 or agreed to receive, and that no person has made or given, or agreed to make or give to the applicant or the parent or the guardian

A any payment or other reward in consideration of the adoption except such as the Court may sanction; and

(d) that there has been a substantial change in the circumstances, if it 15 appears that the applicant has made a previous application under this Act in respect of the same child. (emphasis added)

B **[27]** In the circumstances as narrated above under which the consent of the natural parents had been given, it cannot be said that they had understood the nature and effect of the adoption order and the effect it would have of permanently depriving them of their parental rights over the child forever.

C **[28]** First the natural parents were labouring under the misconception that the Welfare Department would take the child away for them for adoption as they were not married to each other. Furthermore they could not marry each other as yet without their parents' consent in view of the fact that they are both just 18 and 19 years old.

D **[29]** Secondly the second plaintiff had not obtained the consent and blessing of his parents to marrying the first plaintiff and also their support to raise the child.

[30] Thirdly the consent was procured from the plaintiffs hardly seven days after delivery of the child when as medically-attested by reliable research, E mothers after giving birth do battle with post-natal depression because of the hormonal change in the body system.

[31] Fourthly both the natural mother and father had a full and frank discussion with each other and in the light of the consent of the fiance's parents to their marrying each other and to give the blessings and support to F raising the child by the plaintiffs, they wasted no time in contacting the defendants and communicating to them their change of mind and in trying the get the child back from the defendants.

[32] In England, their Parliament has recognised that because of the stress that mothers go through upon delivery and the likely pressure brought to bear G on mothers, especially single mothers, to give up their child for adoption, *albeit* with good intentions, it is clearly and compassionately provided for in s. 47 of their Adoption and Children Act 2002 as follows:

47. Conditions for making adoption orders

H (1) An adoption order may not be made if the child has a parent or guardian unless one of the following three conditions is met; but this section is subject to section 52 (parental etc. consent).

(2) The first condition is that, in the case of each parent or guardian of the child, the court is satisfied:

I (a) that the parent or guardian consents to the making of the adoption order;

(b) that the parent or guardian has consented under section 20 (and has not withdrawn the consent) and does not oppose the making of the adoption order; or

(c) that the parent's or guardian's consent should be dispensed with.

(3) A parent or guardian may not oppose the making of an adoption order under subsection (2)(b) without the court's leave.

(4) The second condition is that:

(a) the child has been placed for adoption by an adoption agency with the prospective adopters in whose favour the order is proposed to be made;

(b) either:

(i) the child was placed for adoption with the consent of each parent or guardian and the **consent of the mother was given when the child was at least six weeks old**; or

(ii) the child was placed for adoption under a placement order; and

(c) no parent or guardian opposes the making of the adoption order. (emphasis added)

[33] Section 52(3) of their Act further reiterates that:

(3) Any consent given by the mother to the making of an adoption order is ineffective if it is given less than six weeks after the child's birth.

[34] Mr Dalgit Singh for the plaintiffs said that this "cooling off" period is necessary so that the mother of the child would not make a hasty decision without having the opportunity to fully weigh and consider the consequences of being permanently deprived of any parental rights to the child forever. I would say that such a cooling off period of six weeks after the child's birth would not only help avoid hasty decision on the part of the natural parents but also hamper any hurried attempts to hasten the adoption process and to make the consent irrevocable irrespective of whether the natural parents have time to fully assimilate and process what they have been persuaded to do in giving the child up for adoption. While no child should suffer because the natural parents are psychologically not prepared to be parents to the child to nurture him, equally no intended adoptive parents should be allowed to permanently deprive the natural parents of their parental rights to the child by adopting the child when the natural parents have revoked their consent earlier given which consent had been given without being fully conscious of the nature and effect of the adoption order and where it is obvious that the consent had been procured hurriedly and given hastily. It was obvious from the transcript of the tele-conversation on 18 May 2014 between the natural mother and the intended adoptive mother, the heaviness of heart of the natural mother in having to part with the child of her womb and the misrepresentation and misconception that she was labouring under. The relevant parts of the tele-conversation are reproduced below:

At p. 2 of the transcript at para. 2:

> Suara A: Saya tidak sampai hati menyerahkan bayi selepas dilahirkan. Tapi mereka kata akan diserahkan ke rumah kebajikan.

At para. 4:

> Suara A: Selepas bayi dilahirkan saya tak sampai hati. Tapi mereka kata ia akan diserahkan ke rumah kebajikan. Saya tidak ada pilihan lain sebab itulah saya tandatangan untuk menyerah.

And at para. 6:

> Suara A: ... Tapi itu bukan kata-kata dari saya. Adakah saya yang berjanji kepada kamu. Tiban dan abang Kartik berbincang dan bertanya kepada saya. Saya terpaksa setuju kerana tidak ada pilihan lain. Sebenarnya saya tidak ada hati untuk menyerah. Waktu itu juga Puan Suraiya berkata bayi itu akan diserahkan ke rumah kebajikan dan tidak akan diberikan kepada saya.

[35] At any rate the Consent Form as prescribed under Form No. 2 of the Adoption Rules 1953 requires the parents of the child to be adopted to swear to the following:

> I, the undersigned ... of ... being:
>
> (a) the father of the said child;
>
> (b) the mother of the said child;
>
> (c) a guardian of the said child;
>
> (d) a person having the actual custody of the said child;
>
> (e) a person liable to contribute to the support of the said child;
>
> (f) the spouse of the Petitioner;
>
> hereby state that **I understand the nature and effect of the adoption order** for which application is made (and that *in particular I understand that the effect of the order will be permanently to deprive me of my parental rights*). And I hereby **consent to the making of an adopting order in favour of the petitioner(s)**.
>
> In witness whereof I have signed this consent on the ... day of ... 19 ..., at ... (emphasis added)

[36] The prescribed form under the Adoption Rules 1953 in Form 2 has not been executed by the plaintiffs as the natural parents of the child. Assuming that such a consent has been executed, it was held in *Re PA (an infant)* [1971] 3 All ER 522, that such a consent in the forms was not final and that the natural mother was at liberty to withdraw unless the court held that she was withholding her consent unreasonably. The provisions under s. 5(1)(b) of the English Adoption Act 1958 are similar to our s. 5(1)(c) of our Adoption Act 1952 and so their interpretation would be a useful guide for us as well. The relevant parts of the judgment read as follows at p. 523:

LORD DENNING MR. This is a poignant case. It is a case of a little girl who was born in May 1970, and so *she is now about 13 months old. The question is whether she should stay with adopting parents who are excellent in every way or whether she should go back to her natural mother*. The facts are these. *The mother, who is unmarried, when she was expecting the child, being seven months pregnant, thought that it would be right to have the child adopted*. She made inquiries in that behalf from the local children's authorities. The child was born in hospital on May 6, 1970. She was put out for a week with foster-parents. Then the mother had her back for some five weeks with her in her own mother's home, that is, the grandmother's home. But then these things happened. The unmarried mother had an aunt who knew of a young couple who were very anxious to adopt a child. This young couple had been married in 1964. Unfortunately for them, they were unable to have a child of their own. They were anxious to adopt one. They put their names down on an appropriate list and, on inquiries being made, they turned out to be entirely suitable. The unmarried mother's aunt tried to help all concerned. She suggested that the baby should be adopted by this young couple. In the result, the young couple went to see the baby on June 21, 1970. **The unmarried mother herself gave the child over to the wife**. She actually suggested that she should finish feeding the baby, which she did. Then she handed over the baby, with baby clothes, bottles and everything like that to the wife. **The unmarried mother said to her: "Don't worry. I will not change my mind"**. (emphasis added)

[37] The circumstances under which the consent form was executed by the mother in the above case as narrated by Lord Denning MR in his characteristic style of story-telling are as follows at p. 523:

Then the question arose about the form. It was obtained and the unmarried mother was invited to sign it. But she could not make up her mind. I am afraid that the aunt rather badgered her to sign it. She badgered her too much. So the unmarried mother did not sign the form at that stage. But a few weeks later she did go to a woman magistrate. The magistrate handled the matter very carefully. Eventually the unmarried mother decided to sign the form. The unmarried mother – with her own mother there too – told the magistrate that she was now quite sure that adoption was in the baby's best interests, that she had no intention of changing her mind and that she was certain that this was the right thing. This was early in December 1970. But the unmarried mother kept the form. She did not hand it over until January 10, 1971. Then it was handed over to or for the adopting parents. It was handed over in an envelope. It contained the signed form of consent, but also a covering letter from the grandmother – that is, the mother of the unmarried mother – which said:

> Here are the forms [*sic*] that you have all pestered [the mother] to sign knowing that she didn't want to part with [P.A.]. The third party wouldn't take no for an answer. Also your father talked her round to think again saying it would be wicked of [the mother] to take her baby from you. All thoughts were on your side but nobody thought of [the mothers'] feelings ...

A It is quite plain that the grandmother was very reluctant to let the child be adopted. Moreover, immediately thereafter the adopting parents made application to the court for approval of the adoption. *But within a short time – only three weeks afterwards – the unmarried mother made objection to the adoption. She was entitled to object because her consent contained in the form was not final.*

B **She was at liberty to withdraw unless the court held that she was withholding her consent unreasonably**. Those are the words of section 5 (1)(b) of the Adoption Act 1958. (emphasis added)

[38] With respect to how whether or not the natural mother was withholding her consent unreasonably, the Master of the Rolls explained as C follows at p. 524:

So, if Parliament had entrusted the entire welfare of the child to the courts it might be that the right decision would be for her to remain where she is. But that is not what Parliament has enacted. *The natural mother is entitled to withhold her consent so long as she is not unreasonable in so doing.*

D The question whether a mother is reasonable or unreasonable was considered recently by the House of Lords in *In re W (An Infant)* [1971] 2 All ER 49; [1971] 2 WLR 1011. That case shows that *we are not to look solely at the welfare of the child. We are to see whether the unmarried mother is unreasonably withholding her consent. That is to be judged not by her own feelings but by what a reasonable mother in her place would do in all the circumstances of* E *the case.*

One circumstance which influenced the judge was that he thought that the unmarried mother in her heart of hearts wanted to keep the child. She never at any time really wanted to have the infant adopted. Mr. Blom-Cooper challenged that finding, but there was much evidence to support F it. The unmarried mother was very reluctant to sign the form. The aunt pressed her on several occasions. Finally, the grandmother's letter impressed the judge. His finding on this point cannot be upset. The other circumstance which influenced the judge is the fact that *the unmarried mother is now engaged to be married. It is proposed that the baby should go to her mother and grandmother until the marriage, and then to the young married couple.* G *The young man is entirely reliable.*

Seeing that the unmarried mother is able to put forward such good prospects to the court it cannot be said that she is unreasonably withholding her consent. *She is withholding it reasonably in the hope and expectation that she herself will be able to form a secure home for the child.*

H I would add a further point. This baby is only just one year old. It may be somewhat upset by being moved to another home. But that upset will be only temporary. *Soon she will benefit from the love and care of her natural mother, and later, if all goes according to plan, her foster father. She may perhaps be better off than she would have been with the adopting parents. In my opinion the judge's finding cannot be disturbed. The mother is not unreasonably withholding the* I *consent*. (emphasis added)

[39] Likewise in the instant case, the second plaintiff's parents have consented to their son getting married to the mother of the child; the second plaintiff being the father of the child. There should be no good reason to deny the natural parents of the child from wanting to raise the child themselves no matter how challenging their circumstances in life may be. If fact at her end she had applied for this court *via* another originating summons for the court to grant her the consent to marry the second plaintiff under s. 12(2) of the Law Reform (Marriage and Divorce) Act 1976 as she has not attained the age of 21 years old. This court had duly granted the consent on the same day before this decision was delivered as the mother, the surviving parent of the first plaintiff had not filed any affidavit to object even though the court was satisfied that she had been duly served. There was no good reason why she should not be allowed to marry the man she loves and who is also the father of the child that she had given birth to. I was satisfied that the first plaintiff's mother had unreasonably withheld her consent to the first plaintiff marrying the second plaintiff.

[40] Phillimore LJ in his supporting judgment made reference to the fact of the particularly vulnerable state of the mother of the child in her late stage of pregnancy and immediately after birth such that she may not be in the best position to make a balanced and sound judgment with respect to giving up her baby forever to be adopted and to lose forever all her parental rights to the child of her womb. He opined as follows with respect to this and to the fact of her withdrawing her consent that she had earlier given and that she was not unreasonable in withdrawing her consent at p. 526:

> ... it is quite clear that there was ample evidence before the judge on which he could find as he did find that the natural mother never really wanted to have this child adopted. Mr. Blom-Cooper very fairly said that she had a lot of pressure put upon her, and, indeed, if this case illustrates anything *it illustrates how very wrong it is for people to put undue pressure on the natural mother to induce her to have a child adopted. After all, in the last months of her pregnancy and in the early months after the birth she is not in a very good position to make a balanced and sound judgment. She may need time, and it is much better that she should have it rather than that a mistake should be made*. This young mother had her aunt urging her to have the child adopted. Once the child had been handed over to the applicants the father of the female applicant also intervened to put pressure on her. On the other side she had her own mother apparently urging her to keep the child, and then, of course, there were the welfare officers urging her at least to make up her mind. **It is not perhaps surprising that in the end she did sign this form**, and then, having signed it and when these proceedings began, she became engaged. *It seems to me that that must have been a big factor in her withdrawing the consent which she had given. In all the circumstances here and in the light of the high opinion which the judge formed of the natural mother, of her home and of this young man whom she is to marry, it is very difficult to say that she was in any way unreasonable in withholding her consent*. In my judgment this decision was clearly right on the material before the county court judge and this appeal must, accordingly, be dismissed. (emphasis added)

[41] For all the reasons already alluded to I would hold that they have good reasons to withdraw their consent given under a mistaken notion of fact that their baby would be forcibly taken away from them by the Welfare Department. Now that there is no obstacle in their path to be married to each other and indeed they have made up their mind to want to and to raise their child on their own and to provide a stable family for the child, I cannot say that their consent to the adoption has been unreasonably withheld.

Whether It Is For The Welfare Of The Child That The Child Be Returned To His Natural Parents

[42] Section 6(b) of the Adoption Act 1952 provides that before making an adoption order, besides ascertaining that the natural parents have consented to the adoption within the meaning of s. 6(a), the court must further be satisfied that the order if made, will be for the welfare of the child. Section 6(c) further requires that the court be satisfied that neither the adoptive parents nor the natural parents have received any payment or other reward in consideration of the adoption. As there is no suggestion by anyone that payments or rewards are involved in this proposed adoption, this court would not need to labour or linger over this third requirement. As can be seen, the welfare of the child is only one of the three factors which the court has to consider before making an adoption order as was held in *Re Baby M (an infant) (adoption: consent)* [1994] 3 CLJ 98; [1994] 2 MLJ 635. Indeed it is a factor to be considered in determining whether the consent of the natural parents has been reasonably or unreasonably withheld.

[43] The intended adoptive mother alluded to the fact that the natural parents are not married and hence would not be able to provide a stable home environment for the child to grow up in. While that may be true when the consent of the natural parents was given, subsequent events point to the fact that both the natural parents would be getting married to each other; the second plaintiff having obtained his parents consent and blessing and the first plaintiff having obtained an order for this court consenting to her to marry the father of the child based on the principle enunciated in *Kanagalingam v. Kanagarajah* [1982] CLJ 150; [1982] CLJ (Rep) 143; [1982] 1 MLJ 274.

[44] Contrary to what the defendants have painted of the suitability of the natural parents to raise the child in terms of the fact that they are not consistently gainfully employed, I am more than satisfied that from the supporting documents of the EPF Statements for 2014 exhibited by the first plaintiff in exh. TN-3 for herself and exh. TN-4 for the second plaintiff, that both are gainfully employed. She works as a cashier with a money changer earning an average monthly salary of RM1,600 per month and he as a construction supervisor in Danga Bay with an average monthly salary of RM1,800 per month.

[45] The first defendant stated that both her husband and her have stable jobs and are capable of providing the proper education for the child and also other amenities in life for the child. Whilst I do not doubt that the defendants' intention is sincere and that they would endeavour to raise the child as their very own, I cannot allow that to displace the desire of the natural parents to want to raise their very own flesh and blood. The fact that the natural parents are young and inexperienced should not be a factor taken against them for it is only their first child.

[46] The relation of the defendants one Mr Kartigesan had alluded to the fact that the plaintiffs had even considered aborting the baby to be born. I would not place much weight on such an allegation made by someone related to the defendants through whose introduction the defendants had come to know of the child to be adopted. Even if it were true, that should not be taken against the plaintiffs as they were unmarried then and perhaps psychologically unprepared to accept the realities of parenthood without being married as husband and wife. However, that has changed and they are making preparations to be married to each other, all legal and parental consents having been obtained. Reprehensible as their thoughts were, it is not a case of beyond repentance and redemption. Even mothers who had at one stage considered abortion either because they were not ready for their first child conceived out of wedlock or that they were not prepared to have additional children, were known to have love the child they eventually gave birth to. Looking back everyone should be glad that they had not made the rash decision.

[47] The defendants also alluded to the fact that the second plaintiff is of bad character and has been barred from entering Singapore. However the second plaintiff has denied this and further has exhibited his Malaysian passport and also stated the fact that he is a permanent resident of Singapore. The natural parents have stated that they love their child very much and would want to provide the very best for their own child. On the other hand the intended adoptive parents in the defendants have also declared their love for the child with whom they have bonded since the birth of the child. The emptiness and void in their lives have been filled with the introduction of a newborn to be adopted into the family.

[48] I cannot say that the welfare of the child would not be served if an order is made for the child to be returned to his natural parents and for them to raise him. It is the plaintiffs' first child and they should not be denied the opportunity to bring the child up the best they can. Even if their resources to provide for the child be less than that of the defendants, that would not operate in any way to deprive them of their natural right to raise their own. Children from poor homes have been known to excel in life in as much as those raised as rich kids have turned out to be spoilt brats. I am conscious

of the danger of stereotyping but the point is that kids have succeeded both in spite of limited resources and because of opportunities that money could afford. The important thing is that relative poverty of the natural parents should not be a point to be pitted against them.

[49] Learned counsel for the defendants, Mr LA Gomes had referred to *Re Baby M (an infant) (adoption: consent) (supra)* where the court had dispensed with the consent of the natural parents to the child given up for adoption just after a month of being born. The proposed adoptive parents and the natural parents had gone to consult a lawyer at the lawyer's legal firm on the adoption and the relevant consent had been signed by both the natural parents in giving the child up for adoption. After that the child was handed over to the proposed adoptive parents. By the time the application for the return of the child to the natural parents were heard, the adoption proceedings were already afoot.

[50] Each case must be decided in its own merits as the question of whether in the overall circumstances of each case the welfare of the child is best served by the adoption and whether consent of the natural parents has been unreasonably withheld are questions of fact involving findings of facts. The case referred to can be distinguished from the instant case as there some one month had passed before the consent was given compared to hardly a week here. The natural parents had other children of their own ranging from nine to two and a half years. Here it is the natural parents' first child. The amount earned by the natural father was not enough to support the family and that the father had to be away from home and only came back on weekends. The infant there was also clearly in need of medical care and the court was of the view that the neglect of the natural parents had exacerbated the child's medical condition and there was also no clear assurance that the child will be cared for. All these had weighed on the court there to decide on favour of the proposed adoptive parents.

[51] In *Re Thow Seng Yeap; Thow Chow Goon & Anor v. Khor Kar Chooi & Anor* [1989] 1 LNS 6; [1989] 3 MLJ 482, the Supreme Court held that the consent of the natural parents to the adoption filed by the foster parents had not been unreasonably withheld even after a lapse of two years after the natural parents had given their child for adoption according to Chinese customs. The Supreme Court was of the view that there were really no grounds why the foster parents should be preferred to the natural parents from the point of view of the welfare of the infant.

[52] Looking at the totality of the whole circumstances of this case, where both nature and nurture would contend as it were for the love of the child, I would lean in favour of nature. The order for the return of the child to the natural parents cannot be said to be not in the welfare of the child. A child should be left to the natural parents to nurture and only if the free consent

of the natural parents in giving the child for adoption is not in dispute and that the consent is unreasonably withheld, would the child then be left with the adoptive parents for them to raise the child as their very own to the permanent exclusion of the parental rights of the natural parents.

Pronouncement

[53] It was thus with a heavy heart that I had made an order for the child to be removed from the defendants and be returned to the plaintiffs who are the natural and lawful mother and father of the child, ie, an order in terms of prayer (a) and (b) of the amended originating summons in encl. 4. There is no doubt that the plaintiffs must be mulcted in costs for the anguish they have caused the defendants. I ordered costs of RM10,000 to be paid by the plaintiffs to the defendants and also all costs incurred on a full indemnity basis in providing for the baby from birth up to date of the decision including all hospital expenses relating to the delivery of the baby as well which had been borne by the defendants.

[54] The plaintiffs had agreed and so this court proceeded to record that the defendants shall be at liberty to have access to the child every weekend for as long as they wish. I had also granted an interim stay of the order pending the filing within two weeks of an application by the defendant for a stay of this order in the event an appeal is filed by the defendants. The plaintiffs indicated that all costs ordered shall be paid within a month.

Postscript

[55] In the days ahead, it would be most painful and agonising for the defendants but I trust that their love for the baby will give them the strength to cope with each day. As the plaintiffs have agreed to provide every opportunity for the defendants to be able to see the child every weekend, that may in some ways have to buffer the pain of the separation.

[56] It has been a most difficult decision for this court to make because we are dealing with human emotions and the subject of both the love of the natural parents and the intended adoptive parents. Sometimes love would constrain us to hold on exclusively to the object of one's love; sometimes love would constrain us to let go of the object of one's love. May both sides know assuredly from this painful episode that love will help them cope with the challenges that each day may bring, whether it be from having and holding the child for the plaintiffs or the hollowness and emptiness of life without the child for the defendants.